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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,243	11/06/2001	John T. McHale IV	16944-8455	1052
21888	7590	10/18/2005	EXAMINER	
THOMPSON COBURN, LLP ONE US BANK PLAZA SUITE 3500 ST LOUIS, MO 63101			GORT, ELAINE L	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/993,243

Applicant(s)

MCHALE ET AL.

Examiner

Elaine Gort

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,5,7-25,29,30,32-47 and 54-73 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,7-25,29,30,32-47 and 54-72 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. ***Claims 1, 3, 5, 7, 12, 14, 16, 17, 19, 57-60 and 65 are rejected under 35***

***U.S.C. 102(e) as being anticipated by Ragsdale-Elliott et al. (US Patent 6,636,835).***

Ragsdale-Elliott et al. discloses the claimed patron service system for serving at least one patron of an establishment, the system comprising:

At least one patron station (such as patron station shown in figure 1 as 18) located in the establishment and configured to electronically display a plurality of menu items (station 18 displays a menu of options, see figure 2) and electronically display at least one advertisement thereon (station 18 displays photo-images of menu items which Examiner construes to be advertisements for menu items, see column 5 lines 32+; see also figure 3 which discusses advertisements. Examiner construes these images to be “advertisement selection programs” as they are made of readable code to accommodate internet browser software such as Netscape, Internet Explorer to include HTML, JavaScript and other related programming designed for enhanced visual

graphics, column 5 lines 21+), each patron station also being configured to receive order input from a patron corresponding to an order of at least one of the menu items (patron's order food items, see figure 2);

An establishment server (such as server 10 shown in figure 1) in communication with each patron station, the establishment server comprising a database for storing a plurality of advertisements (such as the database 14 shown in figure 1) and an advertisement selection program for selecting which of the stored advertisements are to be communicated to the at least one patron station for display thereon (system inherently has a program to run the advertising selection in order for the patron to view the photo-images of menu items which Examiner is construing to be advertisements), said establishment server configured to receive and process the order input for later fulfillment of the order (server 10 receives and processes the order from the patron station 18 for fulfillment), execute the advertisement selection program (server 10 executes advertising via database 14, see column 7 lines 20+ and column 8 lines 23+), and communicate the advertisement selected upon execution of the advertisement selection program to the at least one patron station for display thereon (patron views advertisements of menu items on the patron station 18 upon selection); and

A central server (such as an internet server containing a database of photo-images as disclosed in column 5 lines 36) in communication with the establishment server, the central server being configured to communicate at least a portion of the advertisement selection program to the establishment server (restaurant owners can transfer, download or upload menu items including photo-images from internet

databases for linking to menu items which Examiner construes to be at least a portion of the advertisement selection program as it contains a photo-image or a link to a photo-image in HTML, JavaScript or and other related programming designed for enhanced visual graphics for viewing. Examiner construes this to mean that the restaurant owners can either link their menu items to these databases or can copy the images to their server databases);

(Regarding claim 3) Where the establishment server includes means for changing the content of the advertising database (restaurant owners can upload or download images to update their advertising database and therefore can change the content of the database);

(Regarding claim 5) further comprising a plurality of the establishment servers in communication with the central server, the central server being configured to communicate a plurality of advertisements to each of the establishment servers for storage in their respective advertisement data bases (the title of the patent suggests the use of the system for more than one restaurant when it states "system for restaurants". Therefore more than one of these in restaurant systems would be in communication with the internet and thus be in communication with the central server storing the menu items that can be transferred, downloaded or uploaded as discussed in column 5 lines 36+);

(Regarding claim 7) where each of the patron stations is configured to receive demographic information from a patron and communicate the demographic information to the establishment server (demographic information is entered by the patron at the

patron station, this data is compiled for advertising, column 3 lines 30+. Examiner construes that this data is sent to the establishment server as it is used for advertising which is carried out by the establishment server);

(Regarding claim 12) where each patron station is configured to receive advertisement selection input from a patron corresponding to a selection of an advertisement displayed there on (patron's can order menu items by inputting into the patron station which corresponds to an ad displayed there, for example the patron in response to a picture of a food item can order it) and communicate the advertisement selection input to the establishment server for further processing (the order is sent to the establishment server 10 for processing of the order);

(Regarding claim 14) where the patron is linked to a website associated with a particular advertisement in response to input (patron is linked to advertisements via the internet, see column 5 line 40);

(Regarding claim 16 ) where the patron identity is input into the patron station and communicated to the establishment server for processing (column 8 lines 52+);

(Regarding claims 17 and 19) creation of a patron file for identifying items ordered (system tracks ordered items for serving and payment therefore must be stored);

(Regarding claims 19, 59 and 60) where each patron station is configured to receive advertisement selection input from a patron corresponding to a selection of an advertisement displayed there on (patron's can order menu items by inputting into the patron station which corresponds to an ad displayed there, for example the patron in

Art Unit: 3627

response to a picture of a food item can order it) and communicate the advertisement selection input to the establishment server for further processing (the order is sent to the establishment server 10 for processing of the order);

(Regarding claim 57) where the central server communicates a plurality of advertisement selection programs to the establishment servers, each of the advertisement selection programs being determinative of any of a plurality of different advertisement selection methodologies (the central server, or internet database communicates ad programs to the establishment servers when the restaurant owner transfers, downloads or links the selective menu items. These transfer, downloads or links are a plurality of different advertisement methodologies);

(Regarding claim 58) where not all establishment server databases store the same plurality of advertisements (as different menu items can be downloaded by different restaurant owners, different advertisements would exist on the different restaurant establishment servers); and

(Regarding claim 65) locally initiating and storing of advertisements on the establishment server database (column 5 lines 36+ discuss restaurant owners transferring original photo-images made by the restaurant owner to the establishment server database).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**3. Claims 8-11, 13, 15, 18, 20, 24, 25, 29, 30, 32-35, 39- 47, 54-56, 61-64, and 66-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ragsdale-Elliott et al. (US Patent 6,636,835) in view of Examiner's Official Notice.**

(Regarding claims 8, 11, 15, 18, 20, 35, 39 and 40-43) Ragsdale-Elliott et al. is silent regarding where the demographic information, interests of the patrons and purchases of the patrons are stored on a central server accessible to multiple stores or restaurants. Examiner takes official notice that it is old and well known in the art of marketing to store customer information on centralized servers to be accessible from multiple stores. A couple examples include: video stores store customer account information on a centralized database so individual stores can tell if the customer has a healthy account or not, and grocery stores have bonus cards to track items purchased and provide discounts at all the store's chains. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Ragsdale-Elliott et al. with the central storage of customer data as taught by Examiner's Official Notice, in order to have the customer data accessible at multiple restaurants.



(Regarding claims 9-11, 24, 25, 29, 34, 46, 47, 54-56, 61-64, 68 and 69-73)

Ragsdale-Elliott et al. is silent regarding where the advertisement selection program is further configured to select an advertisement from the ads based on a patron's order input. Examiner takes official notice that it is old and well known in the art of marketing to recommend related items to increase sales by promoting additional items. For example, waitresses commonly ask patrons if they would like to add a salad, side dish, and/or dessert with their meal in order to increase sales. They may also ask if the customer would like upgrades, such as cheese on their burger for example. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Ragsdale-Elliott et al. with the offering of related items as taught by Examiner's Official Notice, in order to increase sales by promoting additional items.

(Regarding claims 10-11, 30) Ragsdale-Elliott et al. is silent regarding where the advertisement selection program is configured to select an advertisement from the ads based on the time of day. Examiner takes official notice that it is old and well known in the art to provide different menus at restaurants for breakfast, lunch and dinner based on the time of day to provide different food items and/or prices for different meals. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Ragsdale-Elliott et al. with the presenting of different menus for breakfast, lunch and dinner as taught by Examiner's Official Notice, in order to provide different food items and/or prices for different meals.

(Regarding claims 11 and 32) Ragsdale-Elliott et al. is silent regarding where the advertisement selection program is configured to select an advertisement based on the patron's identity. Examiner takes official notice that it is old and well known in the art of marketing to target market individuals in order to provide customer's with advertisements of items they are more likely to purchase. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Ragsdale-Elliott et al. with the target marketing as taught by Examiner's Official Notice, in order to provide customers with advertisements of items they are more likely to purchase.

(Regarding claims 13 and 33) Ragsdale-Elliott et al. is silent regarding where the establishment server is configured to store a plurality of advertisement supplements which are associated with an advertisement. Examiner takes official notice that it is old and well known in the art of advertisements to use multiple pictures to provide additional views and information of a product. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Ragsdale-Elliott et al. with the multiple photos to make up an advertisement as taught by Examiner's Official Notice, in order to provide customers with additional views and information on products available.

(Regarding claim 66) Ragsdale-Elliott et al. is silent regarding where the access to the establishment server for storing advertisements is restricted. Examiner takes official notice that it is old and well known in the art of computer systems to provide limited access to computer features to provide system integrity. It would have been

obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Ragsdale-Elliott et al. with the restricted access as taught by Examiner's Official Notice, in order to provide system integrity

(Regarding claim 67) Ragsdale-Elliott et al. is silent regarding where the advertisements on the central server are initially created. Examiner takes official notice that it is old and well known in the art of computer systems to create documents on a remote computer and send them to a central computer/server in order to share the files with others. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Ragsdale-Elliott et al. with the sharing of advertisements via a central server as taught by Examiner's Official Notice, in order to share created advertisements among the restaurants.

(Regarding claims 44 and 45) Ragsdale-Elliott et al. is silent regarding where the tracking of inventory and updating the inventory based on orders and communicating orders to suppliers to provide accurate and efficient inventory control. Examiner takes official notice that it is old and well known in the art of store computer systems to track inventory, update inventory based on orders and to communicate orders to suppliers. See Ragsdale-Elliott et al. Background of the Invention column 2 lines 1-5. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Ragsdale-Elliott et al. with the inventory tracking, updating and ordering as taught by Examiner's Official Notice, in order to provide accurate and efficient inventory control.

**4. Claims 21-23, 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ragsdale-Elliott et al. (US Patent 6,636,835) in view of Kurland (US Patent 4,553,222).**

(Regarding claims 21 and 36) Ragsdale-Elliott et al. is silent regarding the system being capable of providing music selection options. Kurland et al. discloses that it is known in the art to provide restaurant patron music selection options to provide entertainment. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Ragsdale-Elliott et al. with the music selection options as taught by Kurland et al., in order to provide customers entertainment. In this modification the entertainment is provided the same way the advertisements are provided on the existing Ragsdale-Elliott system.

(Regarding claim 22 and 37) Ragsdale-Elliott et al., as modified above, is silent regarding storing music selection information on the central server. Examiner takes official notice that it is old and well known in the art of marketing to store customer information on centralized servers to be accessible from multiple stores. A couple examples include: video stores store customer account information on a centralized database so individual stores can tell if the customer has a healthy account or not, and grocery stores have bonus cards to track items purchased and provide discounts at all the store's chains. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Ragsdale-Elliott et al. with the central storage of customer data as taught by Examiner's Official Notice, in order to have the customer data accessible at multiple restaurants.

(Regarding claim 23 and 38) Ragsdale-Elliott et al., as modified above, is silent regarding where the advertisement selection program is configured to select an advertisement based on the patron's information such as music selections. Examiner takes official notice that it is old and well known in the art of marketing to target market individuals in order to provide customer's with advertisements of items they are more likely to purchase. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Ragsdale-Elliott et al., as modified above, with the target marketing as taught by Examiner's Official Notice, in order to provide customers with advertisements of items they are more likely to purchase.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1, 3, 5, 7-25, 29, 30, 32-47 and 54-73 have been considered but are moot in view of the new ground(s) of rejection.

See explanation above for clarification of issues.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is 571/272-6781. The examiner can normally be reached on Tuesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571/272-6771. The fax phone

Art Unit: 3627

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to be 'EG' followed by a stylized flourish.

Elaine Gort  
Examiner  
Art Unit 3627

October 14, 2005